

SEP 15 2006

*Docket No. 2138.001B*  
*U.S. Serial No. 10/661,392***REMARKS**

Claims 1-18 were presented in the application as filed, and claims 8-18 were canceled and new claims 19-28 were added in a Preliminary Amendment filed with the application. Claims 1, 2, 4-7, 19, 20, and 27 were canceled, and new claims 29 and 30 were added in a Response filed on November 19, 2004. Claims 31-35 were added in a Response filed on April 11, 2005. Claims 31 and 32 were canceled, and new claims 36-38 were added in a Request for Continued Examination filed on December 14, 2005. Reconsideration of the application and allowance of all claims pending herein are respectfully requested in view of the remarks below.

**Personal Interview**

Initially, applicant Michal Slavik and applicants' representatives gratefully appreciate the time afforded by Examiner Conley during a personal interview on August 31, 2006. Although no agreement was reached during the personal interview, applicant Michael Slavik and applicants' representatives also wish to thank Examiner Conley for his helpful suggestions in connection with amending the claims in an effort to better distinguish applicants' invention over the prior art. The proposed amendments presented during the interview are incorporated above, and the substance of the remarks and arguments presented during the interview are incorporated below.

In addition, in an effort to expedite this application, by this amendment applicants have cancelled the claims directed to a fabric layer (claim 33) and claims 36-38 (which were recited in claims 39-41) so that claims directed to an open flame fire resistant mattress and an open flame resistant article (claims 3, 21-26, 28-30, 34, 35, and 39-49) remain in this application. Applicants reserve the right to pursue the subject matter of the canceled claim 33 in one or more divisional patent applications.

Claims 3, 21-26, 28, 34, and 35 are currently amended and new claims 42-49 have been added. Thus, claims 3, 21-26, 28-30, 34, 35, and 39-49 are pending and under consideration.

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**Claim Rejections Under Double Patenting**

In the Office Action, claims 3, 21-26, 28-30, 33-35, 37-38, and 40-41 are were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 and 19-30 of U.S. Patent No. 6,823,548.

Without acceding to the propriety of this rejection, and for the purposes of expediting prosecution of the application, applicants hereby submit a terminal disclaimer in compliance with 37 CFR 1.321(c) along with authorization of payment of the official fee associated therewith.

Therefore, withdrawal of this rejection is respectfully requested.

**Claim Rejections Under 35 U.S.C. § 103(a)**

In the Office Action, claims 3, 21-26, 28-30, and 33-41 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,718,583 to Diaz in view of U.S. Pat. No. 4,794,037 to Hosoda et al. Claims 3 and 28 are independent claims. Applicants respectfully traverse this rejection for the following reasons.

Briefly summarized, in one aspect, applicants' invention is directed to mattresses having a composite flame retardant fire barrier textile, comprising a flame retardant fire barrier fabric layer and a thermally insulating fabric layer. In particular, the composite textile is disposed between a core and an outermost decorative fabric layer of a ticking layer of the mattress. The fire barrier fabric layer and the thermally insulating fabric layer independently comprise at least one char-forming flame-retardant fiber. Such a textile and configuration aids in reducing the flammability of the mattress.

With reference to the primary applied reference, Diaz discloses a mattress having an outer ticking layer 14, a single fire barrier layer 20, and a foam core 12. See, Diaz at column 3, lines 24-45, and FIG. 5. Hosoda et al. disclose a technique for forming a flame proof fiber product.

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By this amendment, applicants' have amended the claims to a open flame mattress in an effort to better define applicants' invention and to distinguish over the combined applied prior art of Diaz and Hosoda et al. Specifically, independent claim 3 has been amended to include a ticking layer and to define the relationship of the fire barrier textile relative to the ticking layer and the core, and to further describe the core of the mattress. More specifically, claim 3 has been amended to now recite "an outermost decorative fabric layer of a ticking layer", and the fire barrier textile "being disposed between said core and said outermost decorative fabric layer of said ticking layer." In addition, claim 3 has been amended to further define the core as "comprising at least one of: a plurality of springs; a foam material; a water bladder; a batting; an air bladder; and a hairblock." Support for these amendments can be found in paragraph [0017] subsection (d), and in paragraphs [0018] and [0019] of the specification. The addition of new matter has been carefully avoided.

With reference again to Diaz, Diaz simply discloses a single fire barrier fabric layer. Thus, Diaz fails to disclose a "fire barrier textile comprising two distinct fabric layers" as recited in amended independent claim 3. In addition, Diaz fails to disclose a fire barrier textile which includes "a fire barrier fabric layer and a thermally insulating fabric layer" as recited in amended claim 3. Furthermore, Diaz fails to disclose such a fire barrier textile "disposed between said core and said outermost decorative fabric layer of said ticking layer" as now recited in amended claim 3. As noted above, Hosoda et al. discloses a technique for flame proofing a fiber product.

Thus, attempting to combine the teachings of Diaz with Hosoda et al. in an effort to provide a mattress having a fire proof ticking layer fails to result in applicants' invention as now recited in amended independent claim 3 for a open flame mattress which includes all the features of "an outermost decorative fabric layer of a ticking layer", a fire barrier textile being "disposed between said core and said outermost decorative fabric layer of said ticking layer", the "fire barrier textile comprising two distinct fabric layers", namely, "a fire barrier fabric layer and a thermally insulating fabric layer", and wherein the fabric layers "independently compromise at least one char-forming flame-retardant fiber". Further, there is no disclosure, teaching or suggestion in

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Diaz and Hosoda et al., either alone or in combination, for introducing in Diaz an additional element of such a "thermally insulating fabric layer" to provide such a "fire barrier textile" as recited in amended claim 3.

Accordingly, it is respectfully submitted that amended independent claim 3 is patentable over the combination of Diaz and Hosoda et al. Dependent claims 21-26, 34, 35, 39, 40, and 42-44 are believed to be allowable for the same reasons noted above in connection with amended independent claim 3 from which they directly or ultimately depend, as well as for their own additional features.

Independent claim 28, directed to an open flame resistant article, has been similarly amended as independent claim 3, and thus claims 28-30, 38, 41, 45-47 are believed patentable over the combination of Diaz and Hosoda et al. for the reasons noted above.

Further, new dependent claim 43 (dependent from claim 3) and claim 46 (dependent from claim 28) have been added which further describe the fire barrier textile "wherein said fire barrier fabric layer is attached to said thermally insulating fabric layer by at least one of needle punching, adhesive bonding, stitching, quilting, and stitch-bonding." New dependent claim 44 (dependent from claim 3) and claim 47 (dependent from claim 28) have been added which further describe the fire barrier textile "wherein said fire barrier textile is at least one of a weave, a knit, and a non-woven of said fire barrier fabric layer and said thermally insulating fabric layer." As noted above, in addition to not teaching a mattress or article having a fire barrier textile comprising two component layers disposed between an outermost ticking layer and the core, the combination of Diaz and Hosoda et al. fails to disclose attachment of such layers in a fire barrier textile as recited in claims 43-47. Support for new claims 43-47 are found in the specification at paragraph [0025] and in Table 1. The addition of new matter has been carefully avoided.

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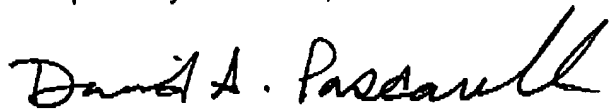
Dependent claim 48 has been added to recite another aspect of applicants' invention. Specifically, the use of the flame resistant mattress in a mattress set. Support for claim 48 can be found in paragraph [0019] and Fig. 2. The introduction of new matter has been carefully avoided. For the reasons noted above, and since these claims are dependent from amended independent claims 3 and 28, it is believed these claims are patentable over the combination of Diaz and Hosoda et al., as well.

### CONCLUSION

There being no other outstanding issues, it is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing the prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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Enclosures:

- \*1-page Terminal Disclaimer
- \*2-page Combined Amendment & Petition for Extension of Time